

STATE OF NORTH CAROLINA
COUNTY OF WAKE

SUBSCRIBER AGREEMENT
(Uniform Commercial Code
Section Master Files, Federal
Lien Master Files, and Image
Master Files)

THIS AGREEMENT, made and entered into this _____ day of _____, 2011 by and between _____ (hereinafter called the "Subscriber") and the North Carolina Department of the Secretary of State (hereinafter called the "State").

WITNESSETH:

WHEREAS, the State hereby agrees to sell and the Subscriber hereby agrees to purchase certain information as is hereinafter described, pursuant to the terms and conditions provided in this Agreement.

NOW THEREFORE, the parties agree as follows:

I. General Definitions. As used in this Agreement, the following terms shall have the meanings established below:

- (a) Uniform Commercial Code Section Master Files: that data electronically stored by and filed with the Secretary of State's Uniform Commercial Code Section pursuant to Article 9 of Chapter 25 of the North Carolina General Statutes, including summaries of financing statements, amendments to financing statements, continuation statements, termination statements, assignments of security interests, and releases of security interests. The Uniform Commercial Code Section Master Files do not include electronic or other images.
- (b) Federal Lien Master File: that data electronically stored by and filed with the Secretary of State's Uniform Commercial Code Section pursuant to Article 11A of Chapter 44 of the North Carolina General Statutes (the Uniform Federal Lien Registration Act). The Federal Lien Master File does not include electronic or other images.
- (c) Notary Public Master Files: that data electronically stored by and filed with the Secretary of State's Notary Public Section pursuant to Article 1 of Chapter 10B-6 of the North Carolina General Statutes. The Notary Public Master File does not include electronic or other images.
- (d) Image Master Files: electronic images of those documents which bear the data stored in the Uniform Commercial Code Section Master Files and the Federal Lien Master File.
- (e) Files: for purposes of this Agreement, this term refers collectively to the Uniform Commercial Code Section Master Files, the Federal Lien Master File and the Image Master Files.
- (f) FTP Site: an electronic means of making Files available for retrieval by the Subscriber at its convenience.

II. Format of File. All Files provided pursuant to the terms of this Agreement shall be created only in the format produced by the programs used by the State. The State may, at any time and for any reason, make the Files available in additional or alternative formats, and it may modify, limit or eliminate entirely the formats currently offered and identified in this Agreement.

III. Grant of License to FTP site. If Subscriber chooses to subscribe to the FTP Site as hereinafter provided, Subscriber shall be granted a non-exclusive, non-transferable license to access that FTP Site. Such right includes the right to access data made available on the FTP Site; to download and store the Files; to display such downloaded data; and to quote and excerpt such downloaded data. Subscriber may create printouts of Files for internal use or for distribution to third parties in accordance with the provisions of this Agreement.

All passwords and user names issued by the State in connection with access to the FTP Site are and will remain the exclusive property of the State. Subscriber is solely responsible for maintaining security of passwords and user names issued by the State. Subscriber is also responsible for access to and use of the FTP Site and the information contained thereon by Subscriber's personnel, whether or not Subscriber has knowledge of or authorizes such access and use.

IV. Use of Files. Subscriber may copy, download, store, publish, transmit, transfer, sell or otherwise use the Files in accordance with the provisions of this Agreement. Data contained in the Files may be used in an archival database or other searchable database.

(a) Display of Header. When information contained within the Files is displayed on a video terminal or otherwise displayed or distributed by the Subscriber, the following statement shall appear continuously on the first screen or page at the beginning of each record in pica sized type or larger and all caps: "THIS DATA IS FOR INFORMATION PURPOSES ONLY. CERTIFICATION CAN ONLY BE OBTAINED THROUGH THE NORTH CAROLINA DEPARTMENT OF THE SECRETARY OF STATE." Such statement shall not be altered, abbreviated or modified in any way by the Subscriber unless the State grants the Subscriber prior written permission.

V. Provision of Passwords and Software by Subscriber. In addition to the payments and reimbursements described below, Subscriber agrees to provide the State with such passwords and software as may be necessary for the State to access Subscriber's on-line network, if any. As a condition of this Agreement, the State shall be entitled to access such on-line network without charge for the limited purpose of viewing Subscriber's compliance with the terms of this Agreement. Failure to provide the necessary passwords and software shall result in the immediate termination of this Agreement.

VI. Purchase Price. The Buyer agrees to pay the State for its subscription to the Files described herein in accordance with the following fee schedule: *(Indicate the purchase price and delivery terms desired by entering the cost associated with that format in the right-hand column.)*

Subscription Format and Delivery Options
Cost

I. MASTER FILES - DATA ONLY (NO IMAGES)

(You may select more than one.)

- (a) Uniform Commercial Code Master Files Subscription (available only via FTP site)
-Annual Subscription Cost: \$4000.00 per year \$_____
- (b) Federal Lien Master File Subscription (available only via FTP site)
-Annual Subscription Cost: \$1600.00 per year \$_____
- (c) Notary Public Master Files Subscription (available only via FTP site)
-Annual Subscription Cost: \$2400.00 per year \$_____

II. MASTER FILES - IMAGES ONLY (NO DATA)

- (a) Image Master Files Subscription (available via FTP Site)
-Annual Subscription Cost: \$5200.00 per year \$_____

TOTAL ANNUAL SUBSCRIPTION COST \$_____

The State reserves the right to amend the fee schedule at any time without notice to reflect changes in office procedure, State statutes or regulations, or the costs of providing the information purchased pursuant to this Agreement.

VII. Payment Terms. The State shall provide access to the Files to Subscriber upon receipt the applicable fee(s). Generally, the State will accept payment in check or money order made payable to the North Carolina Secretary of State. The State, however, reserves the right, upon demand and without notice, to require that the Subscriber use certified funds to pay for its subscription(s). A \$20.00 processing fee will be charged on any dishonored check received for the payment of a subscription. Additionally, in the event of non-payment, the State reserves the right to block access to the Files or otherwise withhold delivery of the Files until such time as payment in full is received.

VII. No Limitation on Distribution of Information. Nothing herein contained shall be construed to limit in any way the right of the State to provide the Files, or copies thereof, to whomever the State desires. Nothing herein shall be construed to limit in any way the right of the State to make the Files or the information contained therein available to the public or to any other persons, firms, entities, associations or corporations via the Internet, World Wide Web or other medium at such cost, if any, as the State deems reasonable. All procedures and programs developed by the State to comply with a customer's request, including the Subscriber's, are and shall remain the property of the State and may be used to provide duplicate copies of the Files for other customers.

IX. Agreement with Subscriber. The Subscriber agrees that the Subscriber shall not transfer, sell or assign this Agreement or any right, privilege or license given hereunder to any other person, firm, entity, association or corporation; and any transfer or attempted transfer, sale or assignment shall render this Agreement thereafter null and void and of no force and effect and shall forever discharge the State from any obligation or liability hereunder.

X. Limitation of Liabilities. THE STATE IS PROVIDING AND SELLING COPIES OF PUBLIC INFORMATION SOLELY FOR GENERAL INFORMATIONAL PURPOSES AND NEITHER GIVES NOR MAKES ANY WARRANTIES, EXPRESSED OR IMPLIED, AS TO THE FILES PROVIDED HEREUNDER, THE DELIVERY OF THE SAME, OR THE SUBJECT MATTER OF THIS AGREEMENT, INCLUDING WITHOUT LIMITATION THE ACCURACY OF THE INFORMATION PROVIDED ON THE FILES. IN NO EVENT SHALL THE STATE BE LIABLE FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE PROVISION OF FILES OR INFORMATION CONTAINED IN THEM, INCLUDING BUT NOT LIMITED TO ANY LOSS OR INJURY TO PERSONS OR PROPERTY RESULTING FROM THE USE OF INFORMATION ON THE FILES OR RESULTING FROM THE USE OF OR ACCESS TO THE STATE'S FTP SITE.

EXCEPT AS SPECIFICALLY PROVIDED HEREIN, THE FILES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF PERFORMANCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, OMISSIONS, COMPLETENESS, CURRENTNESS OR DELAYS. SUBSCRIBER'S EXCLUSIVE REMEDY AND THE STATE'S ENTIRE LIABILITY UNDER THIS AGREEMENT, IF ANY, FOR ANY CLAIM(S) FOR DAMAGES RELATING TO THE FILES WHICH ARE MADE AGAINST THE STATE, WHETHER BASED IN CONTRACT OR NEGLIGENCE, SHALL BE LIMITED TO A REFUND OF ANY UNEARNED FEES PAID BY THE SUBSCRIBER. FOR PURPOSES OF CALCULATING THE PORTION OF FEES DEEMED TO BE UNEARNED, THE FEES PAID BY THE SUBSCRIBER SHALL BE ALLOCATED RATABLY TO THE TIME PERIODS FOR WHICH THEY WERE PAID. IN NO EVENT SHALL THE STATE BE LIABLE TO SUBSCRIBER FOR ANY CLAIM(S) RELATING IN ANY WAY TO (i) SUBSCRIBER'S INABILITY TO PERFORM WORK PROPERLY OR COMPLETELY, EVEN IF ASSISTED BY THE STATE, OR ANY DECISION MADE OR ACTION TAKEN BY SUBSCRIBER IN RELIANCE UPON THE FILES; (ii) ANY LOST PROFITS OR OTHER CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES RELATING IN WHOLE OR IN PART TO SUBSCRIBER'S RIGHTS HEREUNDER OR USE OF, OR INABILITY TO USE, THE FILES, EVEN IF THE STATE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR (iii) THE PROCURING COMPILING, INTERPRETING, EDITING, WRITING, REPORTING OR DELIVERY OF THE FILES. THE STATE MAKES NO WARRANTY THAT ACCESS TO THE FILES WILL BE UNINTERRUPTED, SECURE, COMPLETE OR ERROR FREE, NOR DOES THE STATE MAKE ANY WARRANTY AS TO THE LIFE OF ANY URL. SUBSCRIBER ACKNOWLEDGES THAT

PROVISION OF THE FILES ENTAILS SOME LIKELIHOOD OF HUMAN AND MACHINE ERRORS, DELAYS, INTERRUPTIONS AND LOSSES, INCLUDING THE INADVERTENT LOSS OF THE FILES OR DAMAGE TO MEDIA.

THE FILES FURNISHED PURSUANT TO THIS AGREEMENT ARE NOT TO BE CONSTRUED AS CERTIFIED COPIES OF ANY OF THE INFORMATION APPEARING ON THE FILES OR AS A CERTIFICATION BY THE STATE OF THE FILING OF ANY INFORMATION.

XI. Buyer Indemnification. Subscriber agrees to indemnify, defend and hold harmless the State, its officers, agents and employees fully and completely against and with respect to any and all liabilities, losses, claims, damages, expenses, or costs accruing or resulting from loss incurred by any and all persons, firms, entities, associations or corporations as a result of errors or omissions introduced into the Files by the Subscriber and/or resulting from Subscriber's dissemination of any or all of the information contained in the Files.

XII. Term of Agreement. The rights and obligations of the parties pursuant to this Agreement shall commence at 12:00 a.m. on July 1, 2011 and, unless sooner terminated pursuant to the terms set forth herein, shall be terminated at 11:59 p.m. on June 30th 2012 reserves the right to terminate this Agreement without notice or penalty at any time and for any reason. If this Agreement is terminated by the State, the State shall not be liable to the Subscriber for any loss, damages, expenses or costs, except that any unearned portion of the fee paid by subscriber shall be refunded to the Subscriber. In the event of termination of this Agreement, the fee paid by the Subscriber shall be allocated ratably to the time periods for which it was paid, for purposes of calculating the portion of the fee deemed to be unearned. The refund of unearned fees, if any, shall be Subscriber's sole remedy against the State in the event of termination of this Agreement by the State.

XIII. Force Majeure. The State's performance under this Agreement is subject to interruption and delay due to causes beyond its reasonable control, such as acts of God, acts of any government, war or other hostility, civil disorder, the elements, fire, explosion, power failure, equipment failure, sabotage, "hacker attacks", industrial or labor dispute, inability to obtain necessary supplies and the like.

XIV. Amendments to Agreement. It is mutually understood and agreed that no alteration of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto and that no oral understanding or agreements not incorporated herein and no alterations or variations of the terms hereof shall be binding on either party unless made in a writing signed by both parties. Failure of either party to enforce any provision of this Agreement shall not constitute or be construed as a waiver of such provision or of the right to enforce such provision.

XV. Notices. Except as otherwise provided in this Agreement, all notices must be given in writing to the parties at the following addresses:

The State:
N.C. Department of the Secretary of State
Attention: Don Beckett
Post Office Box 29622
Raleigh, North Carolina 27626-0622
Email: dbecket@sosnc.com

Subscriber:

Email: _____

XVI. Jurisdiction and Governing Law. This Agreement shall be governed by, subject to, and construed according to the laws of the State of North Carolina. Any part of this Agreement in conflict with the law of the State of North Carolina shall be deemed null and void.

XVII. Miscellaneous Provisions. The following miscellaneous provisions shall apply to this Agreement:

- (a) This is a complete and total integration of all agreements between the parties regarding the request and purchase of Files and supersedes and replaces any previous agreements.
- (b) The headings are provided for informational purposes only and shall not be deemed to be controlling parts of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

**North Carolina Department of the
Secretary of State:**

SUBSCRIBER:

Elaine F. Marshall
Secretary of State

By: _____
Haley H. Montgomery
Deputy Secretary of State

By: _____

